The court here announces the measure of damages in cases of the conversion of realty as first pronounced in *Martin* v. *Porter,* 5 M. & W. 352, and followed in *Morgan* v. *Powell,* 3 Q. B. 278. This rule, though favored in cases where the taking was willful or fraudulent, was held inapplicable where the defendant acted inadvertently and in the honest belief that he had a right to do what he did. Where the taker acted in good faith, it was held more reasonable that the "estimate should be the fair value of the property *in situ,* before severance." *Wood* v. *Morewood,* 3 Q. B. 440, note. This distinction between willful and innocent taking was followed in *Jegon* v. *Vivian,* L. R. 3, Ch. 742, and in *Livingstone* v. *Rawyards Coal Co.,* 5 App. Cas. 39. In America, *Forsyth* v. *Wells,* 41 Pa. 291, established the doctrine that where the defendant acted in good faith he should be allowed the value of his labor and the measure of damages should be the value of the property before the wrongdoing began. The trend of authority shows that American courts have taken note of the injustice and oppression of the rule of *Martin* v. *Porter, supra,* and of the principal case, where the taking is not willful, but innocent. The strict rule may cause trespassers to be more careful, yet it gives the injured party more than just compensation for the injury he has suffered, and fails to distinguish between fraud and mere mistake. SEDGWICK, DAMAGES [9 Ed.], Sec. 503.

TRUSTS—CONSTRUCTIVE TRUSTS—CONVEYANCE WITH ORAL AGREEMENT TO RECONVEY.—S and his mother, the defendant, owned undivided parts of an estate. S conveyed his interest to D to enable her to raise money by mortgage, on an oral agreement to reconvey when the mortgage should be paid. D sold the property after the death of S, repudiating the oral agreement, and P, the wife and heir of S, brings action to enforce a trust by implication, arising from the fiduciary relation and the repudiation. *Held,* that a trust by implication, excepted from the Statute of Frauds, arises. *Silvers* v. *Howard et al.* (Kan., 1920), 190 Pac. 1.

The court says that it is going too far to say that, in the absence of fraud, a trust can be raised wherever it is against equity to retain property, but finds "constructive fraud" in the abuse of the fiduciary relation. By the weight of authority in America, the parol evidence rule and the statute of frauds form insurmountable objections to enforcing a constructive trust in the above situation, or where grantee agrees to hold in trust, *Titcomb* v. *Morrill,* 10 Allen 15, unless there is dishonest intention at the time of conveyance, *Patton* v. *Beecher,* 62 Ala. 579; *Revel* v. *Albert,* 162 N. W. 595; or a special fiduciary relation, *Biggins* v. *Biggins,* 133 Ill. 211; see *Bullenkamp* v. *Bullenkamp,* 43 N. Y. App. 510. But there should be no difference between dishonest intention at the time of conveyance and after conveyance; see *Gibben* v. *Taylor,* 139 Ind. 573. The constructive trust arises not because of the parol agreement but because of the grantee being unjustly enriched thereby. The English cases recognize this. *Hutchins* v. *Lee,* 1 Atk. 447; *Davies v. Otty,* 35 Beav. 208; *Haigh* v. *Kaye,* L. R. 7 Ch. App. 469; *Booth* v. *Turle,* L. R. 16 Equity Cas. 182; *Peacock* v. *Nelson,* 50 Mo. 256 (*semble*).

California finds no difference between dishonest intention at the time of conveyance and later. *Hillyer* v. *Hynes*, 33 Cal. App. 506; *Hatcher* v. *Hatcher*, 264 Pa. St. 105, accord. And in a case of confidential relationship, *Bradley* v. *Bradley*, 165 Cal. 237, the court talks about the grantee taking an unconscionable advantage over the confiding trustor, although in the same case, which came up later, 37 Cal. App. 263, the court simply said that the breach of the promise is "constructive fraud" where there is a confidential relation, thus declaring in accord with the principal case. Yet, finding "constructive fraud" where there is a breach of promise by one in a confidential relation is a departure from the logic of the situation. A constructive trust is a remedial device to do justice, and has nothing to do with the statute of frauds. See *Davies* v. *Otty*, *supra*. One wonders if the American courts will not eventually put it squarely on this ground. See article by G. P. Costigan, Jr., 12 MICH. L. REV. 515.

TRUSTS—INVESTMENTS—CORPORATE STOCKS.—A trustee invested trust funds in preferred stock of a private corporation which failed. In an action by the beneficiaries against the trustee for losses, *held*, that he is not liable. *In re Buhl's Estate* (Mich., 1920), 178 N. W. 651.

This case decides this point for the first time in Michigan. It follows the Massachusetts rule, substantially, allowing a trustee to invest in the stock of a private corporation if the corporation is one in which a prudent man of intelligence in such matters would invest when seeking a permanent investment, the primary object of which is the preservation of the fund, the obtaining of income being of secondary importance. This rule was laid down in *dicta in Harvard College* v. *Amory*, 7 Pick. 446, and is followed in Massachusetts and some other states. *Lovell* v. *Minot*, 20 Pick. 116 (notes secured by stocks in manufacturing company); *Kimball* v. *Whitney*, 233 Mass. 321, in which the court upheld investment in certificates of an unincorporated holding company; *Washington* v. *Emery*, 57 N. C. 32 (administrator); see *Dickinson, Appellant*, 152 Mass. 184. The opposing rule in the United States is the so-called New York rule, which holds that the fiduciary relation necessarily excludes placing funds beyond control of trustee, where they can be exposed to the hazard of loss or gain, according to the success of the enterprise, in the absence of authority given in the trust instrument, or by statute or order of the court controlling the trust. *King* v. *Talbot*, 40 N. Y. 76· *Worrell's Appeal*, 23 Pa. 44 (guardian); *Commonwealth* v. *McConnell*, 226 Pa. St. 244 (lunatic committee); *Tucker* v. *State*, 72 Ind. 242 (guardian); see *White* v. *Sherman*, 168 Ill. 589. This is the majority rule. Authority of the settlor, however, given in the trust instrument, protects the trustee. *Willis* v. *Braucher*, 79 Ohio St. 290. It seems as though the New York courts recognize a harshness in the rule. *In Matter of Hall*, 164 N. Y. 196, where authority was given to invest in real or personal securities as trustees should see fit, the court intimates that if they had invested in stocks other than those of new and untried companies, they would not have been liable. And in *In re McDowell*, 169 N. Y. S. 853, where trustees by the instrument